

AMENDED IN SENATE APRIL 16, 2013

**SENATE BILL**

**No. 353**

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**Introduced by Senator Lieu**

February 20, 2013

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An act to add Section 1367.041 to the Health and Safety Code, and to add Sections 10127.45 and 10133.10 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 353, as amended, Lieu. Health care coverage: language assistance.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. A willful violation of the act is a crime. Existing law provides for the regulation of health insurers by the Department of Insurance.

Existing law requires the departments to adopt regulations establishing standards and requirements to provide enrollees and insureds with access to language assistance in obtaining health care services. Existing law requires health care service plans and health insurers, if they exceed certain enrollment thresholds, to implement programs to assess the needs of enrollees and insureds, and to provide translation and interpretation for medical services and translation of vital documents, as defined, to enrollees and insureds, and to report to the respective departments regarding internal policies and procedures related to cultural appropriateness. Existing law provides that a health care service plan is in compliance with the requirements if it is required to meet and meets the same or similar standards, as imposed by the Medi-Cal program.

This bill would require a health care service plan that advertises or ~~markets~~ *markets, or allows others to market or advertise on its behalf*, in a language other than English, as provided, and that does not meet certain enrollment thresholds, to translate into that language specified documents. This bill would also require an insurer that ~~markets, advertises, or allows others to market or advertise on its behalf~~, or produces educational materials for health insurance policies in a language other than English, as provided, and that does not meet certain enrollment thresholds, to translate into that language specified documents. This bill would require both those health care service plans and insurers to use trained and qualified translators.

Existing law prohibits a health care service plan, except as provided, from publishing or distributing, or allowing to be published or distributed on its behalf, any advertisement unless a true copy of the advertisement has first been filed with the Director of the Department of Managed Health Care at least 30 days, or any shorter period of time by the director's rule or order, prior to its use and the director, by notice, has not found the advertisement, wholly or in part, to be untrue, misleading, deceptive, or otherwise not in compliance with the applicable provisions, and specified the deficiencies, within the 30 days, or any shorter period of time by the director's rule or order. The director, by rule or order, may classify plans and advertisements and exempt certain classes, wholly or in part, either unconditionally or upon specified terms and conditions, or for specified periods, from these requirements.

This bill would extend the approval requirements and exemptions to health insurers, as specified, and require the Department of Insurance to perform the related functions. The bill would prohibit the department from exempting certain classes of policies and advertisements from the requirements where it concerns new products or products offered by health insurers with a record, in the past 5 years, of violations of these provisions.

By placing additional requirements on health care service plans, the violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1367.041 is added to the Health and  
2 Safety Code, to read:  
3 1367.041. (a) A health care service plan that advertises or  
4 ~~markets markets, or allows any other person or business to market~~  
5 ~~or advertise on its behalf,~~ in a language other than English that  
6 does not meet the minimum enrollee thresholds established under  
7 Sections 1367.04 and 1367.07, or the regulations adopted  
8 thereunder, shall translate into that language all of the following  
9 documents:  
10 (1) Welcome letters or notices of initial coverage, if provided.  
11 (2) ~~Applications to participate in a program or activity or to~~  
12 ~~receive a benefit or service; for enrollment and any information~~  
13 ~~pertinent to eligibility or participation.~~  
14 ~~(3) Letters containing important information regarding eligibility~~  
15 ~~or participation criteria.~~  
16 ~~(4)~~  
17 (3) Notices advising limited-English-proficient persons of the  
18 availability of no-cost translation and interpretation services.  
19 ~~(5)~~  
20 (4) Notices pertaining to the right and instructions on how to  
21 file a grievance.  
22 ~~(6)~~  
23 (5) Uniform summaries of benefits of coverage required by  
24 Section 2715 of the federal Public Health Service Act (42 U.S.C.  
25 Sec. 300gg-11) and any rules or regulations promulgated  
26 thereunder.  
27 ~~(b) Once the enrolled non-English-language population in which~~  
28 ~~the health care service plan has marketed or advertised meets a~~  
29 ~~threshold listed in subparagraph (A) of paragraph (1) of subdivision~~  
30 ~~(b) of Section 1367.04, the plan shall translate all vital documents~~  
31 ~~as required under Section 1367.04 and the regulations adopted~~  
32 ~~thereunder.~~  
33 ~~(c)~~  
34 (b) A health care service plan shall use a trained and qualified  
35 translator for all written translations of marketing and advertising

1 materials relating to health care service plan products, and for all  
2 the documents specified in subdivision (a).

3 SEC. 2. Section 10127.45 is added to the Insurance Code, to  
4 read:

5 10127.45. (a) Except as provided in subdivision (b), a health  
6 insurer offering policies of health insurance, as defined in Section  
7 106, shall not publish or distribute, or allow to be published or  
8 distributed on its behalf, any advertisement unless both the  
9 following conditions are met at least 30 days prior to the publishing  
10 or distribution, or any shorter period as the department may allow  
11 by regulation:

12 (1) A true copy of the advertisement has first been filed with  
13 the department.

14 (2) The department, by notice, has not found the advertisement,  
15 wholly or in part, to be untrue, misleading, deceptive, or otherwise  
16 not in compliance with this code or the rules thereunder, and has  
17 specified any ~~deficiencies~~ *deficiencies within the 30 days or any*  
18 *shorter time as the director by rule or order may allow.*

19 (b) Except as provided in subdivision (c), a health insurer that  
20 has been admitted to transact health insurance under this part  
21 continuously licensed under this chapter for the preceding 18  
22 months may publish or distribute, or allow to be published or  
23 distributed on its behalf, an advertisement without having filed  
24 that advertisement with the department for prior approval, if the  
25 insurer and the material comply with each of the following  
26 conditions:

27 (1) The advertisement or a material provision thereof has not  
28 been previously disapproved by the department by written notice  
29 to the insurer and the insurer reasonably believes that the  
30 advertisement does not violate any requirement of this code or the  
31 rules thereunder.

32 (2) The insurer files a true copy of each new or materially  
33 revised advertisement, used by it or by any person acting on behalf  
34 of the insurer, with the department not later than 10 business days  
35 after publication or distribution of the advertisement or within such  
36 additional period as the department may allow by regulation.

37 (c) (1) If the department finds that any advertisement of a health  
38 insurer has materially failed to comply with this code or the rules  
39 thereunder, the department may, by order, require the insurer to  
40 publish, in the same or similar medium, an approved correction

1 or retraction of any untrue, misleading, or deceptive statement  
2 contained in the advertising, and may prohibit the insurer from  
3 publishing or distributing, or allowing to be published or distributed  
4 on its behalf, the advertisement or any new materially revised  
5 advertisement without first having filed a copy thereof with the  
6 department, 30 days prior to the publication or distribution thereof,  
7 or any shorter period specified in the order.

8 (2) An order issued under this subdivision shall be effective for  
9 12 months from its issuance and may be renewed by order if the  
10 advertisements submitted under this subdivision indicate difficulties  
11 of voluntary compliance with the applicable provisions of this  
12 code and the rules thereunder.

13 (d) A health insurer, insurance agent, or other person regulated  
14 under this code may, within 30 days after receipt of any notice or  
15 order under this section, file a written request for a hearing with  
16 the department.

17 (e) The department, by regulation, may classify plans and  
18 advertisements and exempt certain classes, wholly or in part, either  
19 unconditionally or upon specified terms and conditions or for  
20 specified periods, from the application of subdivisions (a) and (b).  
21 In no instance shall the department exempt new products or  
22 products offered by health insurers with a record within the past  
23 five years of violations of this section.

24 SEC. 3. Section 10133.10 is added to the Insurance Code, to  
25 read:

26 10133.10. (a) An insurer that markets, advertises, or produces  
27 educational materials for a health insurance policy, as defined in  
28 Section 106, *or allows any other person or business to market or*  
29 *advertise on its behalf*, in a language other than English that does  
30 not meet the minimum insured thresholds established under  
31 Sections 10133.8 and 10133.9 or the regulations adopted  
32 thereunder, shall translate into that language all of the following  
33 documents:

34 (1) ~~Welcome letters.~~ *letters or notices of initial coverage, if*  
35 *provided.*

36 ~~(2) Bill notices and statements.~~

37 ~~(3)~~

38 ~~(2) Applications to participate in a program or activity or to~~  
39 ~~receive a benefit or service.~~ *for health insurance and any*  
40 *information pertinent to eligibility or participation.*

1     ~~(4) Letters containing important information regarding eligibility~~  
2     ~~or participation criteria.~~

3     ~~(5)~~

4     (3) Notices advising limited-English-proficient persons of the  
5     availability of no-cost translation and interpretation services.

6     ~~(6)~~

7     (4) Notices pertaining to the right and instructions on how to  
8     file a grievance.

9     ~~(7)~~

10    (5) A matrix of the categories of health insurance benefits  
11    outlined in the insurance policy including copayments and  
12    coinsurance, exclusions, and limitations in the following sequence:  
13    deductibles, lifetime maximums, professional services, outpatient  
14    services, hospitalization services, diagnostic and therapeutic  
15    radiological services, preventative health services, emergency  
16    health care coverage including ambulance services, prescription  
17    drug coverage, durable medical equipment, mental health services,  
18    chemical dependency services, home health services, other services  
19    or the uniform summary of benefits of coverage required by Section  
20    2715 of the federal Public Health Service Act (42 U.S.C. Sec.  
21    300gg-11) and any rules or regulations promulgated thereunder.

22    ~~(b) Once the insured non-English-language population in which~~  
23    ~~the insurer has marketed or advertised, or for which the insurer~~  
24    ~~produced education materials, meets a threshold listed in~~  
25    ~~subparagraph (A) of paragraph (3) of subdivision (b) of Section~~  
26    ~~10133.8, the insurer shall translate all vital documents as required~~  
27    ~~under Sections 10133.8 and 10133.9 and the regulations adopted~~  
28    ~~thereunder.~~

29    ~~(e)~~

30    (b) An insurer shall use trained and qualified translators for the  
31    translation of all marketing and advertising materials relating to  
32    health insurance products and for all the documents specified in  
33    subdivision (a).

34    SEC. 4. No reimbursement is required by this act pursuant to  
35    Section 6 of Article XIII B of the California Constitution because  
36    the only costs that may be incurred by a local agency or school  
37    district will be incurred because this act creates a new crime or  
38    infraction, eliminates a crime or infraction, or changes the penalty  
39    for a crime or infraction, within the meaning of Section 17556 of  
40    the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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